

FREQUENTLY ASKED QUESTIONS ABOUT RULE 10b-18 AND STOCK REPURCHASE PROGRAMS

The Regulation

What is Rule 10b-18?

Rule 10b-18 provides a company (and its “affiliated purchasers”) with a non-exclusive safe harbor from liability under certain market manipulation rules (*i.e.*, Sections 9(a)(2) and 10(b) of the Securities Exchange Act of 1934 (the “Exchange Act”) and Rule 10b-5 under the Exchange Act, each to a limited extent) when repurchases of the company’s common stock in the market are made in accordance with the rule’s manner, timing, price and volume conditions. Rule 10b-18’s safe harbor is available for purchases of the company’s stock on any given day. To fall within the safe harbor, the company’s repurchases must satisfy, on a daily basis, each of the rule’s four conditions. Failure to meet any one of the four conditions will disqualify all of the company’s repurchases from the safe harbor for that day.

Why was Rule 10b-18 adopted?

A company has a strong interest in the market price of its securities. The market price of the company’s common stock may determine the price of a future acquisition or the price of the offering of additional

shares and also serves as an indicator of the health and performance of the company. Therefore, a company may have an incentive to manipulate the price of its common stock. One way a company may positively affect the price of its common stock is to repurchase shares of its common stock in the open market. Such repurchases may subject a company to claims of manipulative behavior. However, a company may also engage in open market repurchases for many legitimate business reasons. Therefore, in 1982, the Securities Exchange Commission (the “SEC”) adopted Rule 10b-18 to provide a non-exclusive safe harbor for company repurchases.

Why has the SEC proposed to amend Rule 10b-18?

On January 26, 2010, the SEC proposed amendments to Rule 10b-18 to clarify and modernize the safe harbor provision in light of market changes with respect to trading strategies and developments in automated trading systems and technology that have increased the speed of trading and changed the profile of how company repurchases are effected.¹ These proposed amendments are incorporated into this discussion of the conditions for repurchases under Rule 10b-18.

¹ See proposing release No. 34-61414 available at <http://sec.gov/rules/proposed/2010/34-61414.pdf>.

Scope of the Rule 10b-18 Safe Harbor

Does Rule 10b-18 provide an absolute safe harbor from liability under Section 10(b) or Rule 10b-5?

No. Rule 10b-18 does not provide an absolute safe harbor from liability under Section 10(b) or Rule 10b-5. For example, Rule 10b-18 confers no immunity from possible Rule 10b-5 liability where the company engages in repurchases while in possession of material non-public information, or where purchases are part of a plan or scheme to evade the federal securities laws.

Note that a company may exceed the limitations contained in Rule 10b-18 and still not incur liability under the anti-manipulation provisions of Section 9(a)(2) or Rule 10b-5. However, there is a greater uncertainty associated with purchase activities outside the “safe harbor” because of the lack of specific guidelines.

Is Rule 10b-18 the exclusive means by which a company may repurchase its common stock in the open market?

No. Rule 10b-18 does not mandate the terms under which a company may repurchase its stock. Rule 10b-18 expressly provides that there is no presumption of manipulation simply because the company’s purchases do not satisfy the rule’s conditions.

Purpose and Benefits of Stock Repurchase Programs

What is the purpose of a stock repurchase program?

A company may want to engage in stock repurchases for a variety of reasons, including: (i) to meet the needs of employee benefit plans and stock option plans; (ii) to

send a signal to the market that the stock is undervalued and a good investment; (iii) to move excess cash to a better investment when more favorable alternatives are unavailable; or (iv) to reduce its cost of capital.

What are the benefits of a stock repurchase program?

There are several benefits associated with stock repurchase programs. These include the following:

- The availability of a non-exclusive safe harbor from liability for manipulation of the company’s stock price (if Rule 10b-18’s conditions are met);
- Greater certainty to the company and affiliated purchasers in planning purchases of the company’s common stock;
- Increased liquidity, which benefits shareholders;
- Minimization of dilution post acquisition;
- A tax efficient alternative to dividends as a way to return money to the shareholders;
- Generally, stock repurchases may have a positive impact on earnings per share, assuming the cash used to fund the plan or program was not needed for other corporate purposes; and
- Potentially less negative publicity associated with company repurchases, if the program is previously disclosed.

Establishing Stock Repurchase Programs

Should a stock repurchase program be approved by the board of directors?

Any stock repurchase program should be authorized and approved by the board of directors. As part of this authorization, the board should document the purpose of the share repurchase. It is important that the board concludes that the repurchase program is desirable and in the company's and its shareholders' best interests. When approving a repurchase program, it is advisable that the board establishes a record of discharging its fiduciary duty. The record should include a current review, in consultation with the company's accountants, of the company's capital position and a thorough discussion of the purpose of the program.

What factors should a company consider in deciding whether to adopt a stock repurchase program?

Among the factors to be considered are (i) the impact on the company's cash position and capital needs for its continuing operations; (ii) the alternative uses for the cash used to repurchase the stock, including repayment of outstanding indebtedness; and (iii) the possible effect on earnings per share and book value per share. The company should consult with its accountants regarding the company's capital position prior to implementing a stock repurchase program. Additionally, prior to implementing a stock repurchase program, the company should conduct a review of its charter, bylaws and the agreements to which it is a party, or by which it is bound, to determine whether there are any restrictions on or impediments to the company's use of funds to acquire its own securities. Specifically, the company's loan agreements and security documents

should be reviewed for any such restrictions or limitations. Any change in control or anti-dilution provisions also should be reviewed to ensure that the consequences of the company's repurchase activity are understood. These restrictions may be direct limitations on repurchases or indirect limitations in the form of financial ratios and covenants.

Are there any state law restrictions on stock repurchases?

Certain provisions of the Delaware General Corporation Law ("DGCL") contain restrictions regarding legally available funds that apply to repurchases of shares of capital stock. Under DGCL Section 160, a Delaware corporation cannot purchase shares of its capital stock when the purchase "would cause any impairment of the capital of the corporation." The company should consult with its outside counsel regarding any applicable state law restrictions prior to implementing a stock repurchase program.

Additionally, the California Corporations Code (§§ 500 *et seq.*) requires that a California corporation must follow certain requirements prior to engaging in a distribution which includes company repurchases. Accordingly, a company repurchase may only be made if either: (a) the amount of the retained earnings immediately prior to the distribution equals or exceeds the amount of the proposed distribution, or (b) immediately after giving effect to the distribution, (i) the sum of the assets of the corporation (exclusive of certain items) would be at least equal to 1 1/4 times its liabilities (exclusive of certain items) and (ii) the current assets of the corporation would be at least equal to its current liabilities, or, if the average of the earnings of the corporation before taxes on income and before

interest expenses for the two preceding fiscal years was less than the average of the interest expenses of the corporation for those fiscal years, at least equal to 1 1/4 times its current liabilities.

What are the reporting requirements for company stock repurchases?

Regulation S-K and Forms 10-Q, 10-K and 20-F (for foreign private companies) require quarterly periodic disclosure for all company repurchases of equity securities. This disclosure is required regardless of whether the repurchase is effected under the safe harbor of Rule 10b-18. A company must disclose in tabular form (a) the total number of shares, by month, repurchased during the past quarter; (b) the average price paid per share; (c) the number of shares that were purchased as part of a publicly announced repurchase plan; and (d) the maximum number (or approximate dollar value) of shares that may yet be purchased under the plans or programs. For publicly announced repurchase plans, the company is also required to disclose (by footnotes to the table) the following information: (a) the announcement date; (b) the share or dollar amount approved; (c) the expiration date (if any) of the plans or programs; (d) each plan or program that has expired during the period covered by the table; and (e) each plan or program that the company has determined to terminate prior to expiration or under which the company does not intend to make further purchases. Additionally, the company should consider discussing any repurchase program under the "Liquidity and Capital Resources" section of the MD&A, as any repurchase plan could be considered to be a "known trend" or "commitment" that is reasonably likely to result in a material change to the company's liquidity. The company should also consider whether

disclosure of significant repurchases is required in its financial statements or notes to its financial statements.

Should a stock repurchase program be publicly announced?

While Rule 10b-18 does not specifically require a company to publicly disclose a stock repurchase program, the disclosure provisions of other federal securities laws, including Rule 10b-5, still apply. It is generally advisable, at a minimum, for a company to announce the existence of a significant stock repurchase program. However, an announcement should not be made unless the company actually intends to repurchase shares because any termination of the repurchase program without purchases could be deemed manipulative in the absence of a sound business reason.

The specifics of the public announcement depend on the circumstances, but the company should include the following:

- the reason for the repurchase;
- the approximate number or aggregate dollar amount of shares to be repurchased;
- the method of purchase to be used;
- any significant corporate developments which have not been previously disclosed;
- the impact of the repurchase program on the remaining outstanding shares;
- any arrangement, contractual or otherwise, with any person for the purchase of the shares;
- whether the purchases are to be made subject to restrictions relating to volume, price and timing in an effort to minimize the impact of

the purchases upon the market for the shares;
and

- the duration of the program.

The company should consider filing a Form 8-K with any press release as an exhibit for purposes of Regulation FD.

Conditions for Repurchases under Rule 10b-18

What are the conditions for conducting stock repurchase programs within the safe harbor?

Rule 10b-18's non-exclusive safe harbor is available only when the repurchases of the company's common stock in the market are made in accordance with the following conditions:

- *manner of purchase condition*: requires a company to use a single broker or dealer per day to bid for or purchase its common stock;
- *timing condition*: restricts the periods during which a company may bid for or purchase its common stock;
- *price condition*: specifies the highest price a company may bid or pay for its common stock; and
- *volume condition*: limits the amount of common stock a company may repurchase in the market in a single day.

Failure to meet any one of the rule's conditions will disqualify the company's purchases for that day from the safe harbor.²

² However, a purchase that otherwise is in compliance with the rule at the time the purchase order is entered but does not meet the price condition at the time the purchase is effected due to a "flickering quote" will only remove that particular purchase

What does the manner of purchase condition require?

On a single day, the purchases and any bids of the company or its affiliated purchasers must be made through one broker or dealer. However, this restriction does not bar the company or its affiliated purchasers from making purchases if they are deemed not solicited by or on behalf of the company, such as purchases not solicited from additional brokers or dealers or when a shareholder approaches the company to buy shares. A company must evaluate whether a transaction is "solicited" based on the facts and circumstances of each case. Additionally, on a daily basis, the company may use a different broker or dealer to execute their purchases. Furthermore, a company may use a different broker or dealer during an after-hours trading session from the one used during regular hours.

A company that directly accesses an electronic communication network ("ECN") or an alternative trading system ("ATS") to purchase common stock will be considered to be using one broker or dealer and cannot purchase its common stock through a non-ECN or non-ATS broker or dealer on the same day.

The purpose of this condition is to avoid creating the false appearance of widespread purchasing interest and trading activity in the company's common stock through the use of many brokers or dealers on any given trading day.

What does the timing condition require?

A purchase by the company may not be the opening transaction reported in the consolidated system, the principal market or the market where the purchase is

from the safe harbor, rather than all of the company's other Rule 10b-18 purchases for that day.

effected.³ A consolidated system is a consolidated transaction or quotation reporting system that collects and publicly disseminates on a current and continuous basis, transaction or quotation information in common equity securities pursuant to an effective transaction reporting plan or an effective national market system plan.

Additionally, the purchase may also not be effected during the ten minutes before the scheduled close of the primary trading session in the principal market for the security and the last ten minutes before the scheduled close of the primary trading session in the market where the purchase is effected for a security that has an average daily trading volume (“ADTV”) of \$1 million or more, and a public float value of \$150 million or more. ADTV is the volume reported for the security during the four calendar weeks preceding the week in which the Rule 10b-18 purchase is to be effected. For all other securities, purchases may not be effected during the thirty minutes before the scheduled close of the primary trading session in the principal market for the security and the thirty minutes before the scheduled close of the primary trading session in the market where the purchase is effected.

A company purchase may be effected following the close of the primary trading session in the principal market until the termination of the period in which the last sale prices are reported in the consolidated system if: (i) the purchase is effected at a price that does not exceed the lower of the closing price of the primary trading session in the principal market for the security, and any lower bids or sales prices subsequently reported in the consolidated system; (ii) all of the other

10b-18 requirements are met; and (iii) the company’s Rule 10b-18 purchase is not the opening transaction of the session following the close of the primary trading session.

The purpose of this condition is to prevent the company from establishing either the opening or closing price of the stock, both of which are considered to be the guide in the direction of trading.

What does the price condition require?

During trading hours, if the security is reported in the consolidated system, displayed and disseminated on any national securities exchange, or quoted on any inter-dealer quotation system that displays at least two price quotations, company purchases must be made at a price not exceeding the highest independent bid or last transaction price, whichever is higher. For all other securities, a company will need to look at the highest independent bid obtained from three independent dealers.

For after-hours trading, stock repurchase prices must not exceed the lower of the closing price of the primary trading session in the principal market for the security and any lower bids or sales prices subsequently reported in the consolidated system by other markets. The company is permitted to repurchase until the termination of the period in which last sale prices are reported in the consolidated system.

However, the SEC will except from Rule 10b-18’s price condition repurchases effected on a volume-weighted average price (“VWAP”) basis, provided the following criteria are met:⁴

³ This discussion incorporates the rule amendments proposed by the SEC on January 25, 2010. See footnote 1.

⁴ See footnote 3.

- the purchases otherwise comply with the manner of purchase, time and volume conditions of Rule 10b-18;
- the security is an “actively-traded security,” as defined in Regulation M;
- the purchase is entered into or matched before the opening of the regular trading session;
- the execution price of the VWAP purchase is determined based on all regular way trades effected in accordance with specified conditions that are reported in the consolidated system during the primary trading session for that security;
- the purchases do not exceed 10% of the security’s relevant ADTV;
- the purchase is not effected for the purpose of creating actual, or apparent, active trading in or otherwise affecting the price of any security;
- VWAP is calculated in accordance with the provisions of the rule; and
- the purchase is reported using a special VWAP trade modifier.

The purpose of the price condition is to prevent a company from propping up its stock price through the repurchases, or from supporting the price at a level that would not otherwise be maintained by independent market forces.

What does the volume condition require?

The purchases on a particular day may not exceed 25% of the ADTV in the preceding four weeks. (“Block” transactions are included in determining the 25% limit and include trades of not less than \$50,000 with a volume of not less than 5,000 shares if the trade value is

less than \$200,000, but excludes any securities the company knows or has reason to know were accumulated by a broker-dealer, acting as a principal, for the purpose of resale to the company.) Alternatively, the company may make one “block” purchase per week and not be subject to the 25% limit, provided the “block” purchase is the only Rule 10b-18 purchase made on that same day. Rule 10b-18’s volume calculation carries over from the regular trading session to after-hours trading sessions.

The purpose of the volume condition is to prevent the company from dominating the market by purchasing a large amount of its common stock relative to purchases in the independent market.

What happens to the Rule 10b-18 conditions during periods of severe market downturns?

The Rule 10b-18 safe harbor conditions are modified following a market-wide trading suspension. The volume of purchases condition is modified so that company may purchase up to 100% of the security’s ADTV. Additionally, the time of purchase condition does not apply either (a) from the reopening of trading until the scheduled close of trading on the day that the market-wide trading suspension is imposed, or (b) at the opening of trading on the next trading day until the scheduled close of the trading day, if a market-wide trading suspension was in effect at the close of trading on the preceding day.

Purchase Activity Covered by Rule 10b-18

What types of securities are covered by Rule 10b-18?

The Rule 10b-18 safe harbor only applies to purchases by a company of its common stock (or an equivalent

interest, such as a unit of beneficial interest in a trust or limited partnership or a depository share). It does not apply to any other type of security, including purchases of preferred stock, warrants, convertible debt securities, options, or security future products. However, many companies analogize to the conditions of Rule 10b-18 in connection with repurchases of other equity-linked securities.

What types of purchases are covered by Rule 10b-18?

Generally, open market purchases by a company of its common stock are covered by the safe harbor. However, certain types of purchases of common stock are not covered by Rule 10b-18, due to the greater potential risk of manipulation of the price of the stock by the company. Such transactions include: (i) purchases effected by or for an employee plan by an agent independent of the company; (ii) purchases of fractional interests; (iii) certain purchases made pursuant to a merger, acquisition, or similar transactions involving a recapitalization (subject to certain exceptions); and (iv) purchases made pursuant to a tender offer governed by the Williams Act.

When will purchases by an affiliated purchaser be attributed to the company?

Purchases by an affiliate will be attributable to the company under Rule 10b-18 where, directly or indirectly, (a) the affiliate controls the company's Rule 10b-18 purchases, (b) the company controls the affiliate's Rule 10b-18 purchases, or (c) the Rule 10b-18 purchases by the affiliate and the company are under common control. Purchases by persons acting in concert with the company for the purposes of acquiring the company's common stock will also be attributed to the company. If Rule 10b-18 purchases are effected by

or on behalf of more than one affiliated purchaser (or the company and one or more of its affiliates) on a single day, the company and all affiliated purchasers must use the same broker or dealer.

Who is deemed an "affiliated purchaser"?

Under Rule 10b-18, an affiliated purchaser is: (i) a person acting, directly or indirectly, in concert with the company for the purpose of acquiring the company's securities; or (ii) an "affiliate" who controls the company's purchases or whose purchases are controlled by or under common control with the company. An "affiliate" is any person who controls or is controlled by or is under common control with the company.⁵ However, the definition of affiliated purchaser does not include a broker or dealer (solely by reason of that broker effecting purchases on behalf of the company), or any officer or director of the company (solely by reason of that officer's or director's participation in the decision to authorize Rule 10b-18 purchases). A financial institution with an affiliated broker-dealer may want to take special care in conducting this analysis.

What if there is a merger or other acquisition occurring?

If a merger, acquisition, or similar transaction is under negotiation or discussion, the safe harbor of Rule 10b-18 is generally not available for company purchases made at this time, even after public announcement of the event, until the earlier of the closing of the transaction or the completion of the vote by the target shareholders, unless the following applies:

⁵ The SEC has not precisely defined "control;" however, the SEC takes the position that "control" is a question of fact to be determined by the circumstances of each case.

- the purchase price is solely cash (and there is no valuation period with respect to the purchase price);
- the repurchases are ordinary repurchases that do not exceed the lesser of 25% of the security's four-week ADTV or the company's average daily Rule 10b-18 purchases during the three full calendar months preceding the announcement; or
- the repurchases are "block" transactions that do not exceed the average size and frequency of "block" purchases during the three full calendar months preceding the announcement.

Is the safe harbor available to a company who recently conducted an initial public offering?

Yes, however, the company has to wait four weeks after its common stock has begun to trade because Rule 10b-18's volume condition is based upon trading in the common stock for four full calendar weeks prior to the week in which the purchase is effected.

Are there any special considerations that arise in connection with offerings?

A company and its counsel should be particularly mindful of any repurchase programs (whether direct or indirect) that may be ongoing at the time that a company first starts contemplating an offering. The company and counsel will want to consider the appropriate time to suspend an ongoing repurchase program. In this context, a company also should consider the interplay of these questions with the requirements of Regulation M relating to activities in connection with an offering. *See "How does Regulation M affect stock repurchases?"*

What are some of the issues that a company should consider in connection with entering into an accelerated share repurchase program?

By its terms, the Rule 10b-18 safe harbor is available only to the company and not to the broker-dealer/derivatives dealer that will be executing the share repurchase program. In substance, however, the broker-dealer will be executing repurchases having already entered into a separate agreement with the company. This agreement between the company and the broker-dealer will be documented as a confirmation to an ISDA Master Agreement. The confirmation will set out the mechanics of the transaction, including the mechanics relating to the buy-in of the shares and the pricing of the shares sold by the broker-dealer to the company, as well as arrangements relating to dividends that may be declared by the company during the term of the arrangement. The confirmation also will require that the company make a number of representations and warranties to the broker-dealer. Generally, these will address the company's SEC filings, approvals for the repurchase program, confirmation that the company is not engaged in a "distribution," and representations regarding the company's status. The company's counsel also typically will be required to render an opinion to the broker-dealer addressing certain corporate matters. As a precaution, most confirmations will incorporate Rule 10b-18 provisions and broker-dealers will follow the guidance provided by Rule 10b-18 in structuring these indirect repurchase transactions.

What other considerations must a company keep in mind when engaging in stock repurchases under its program?

A company engaging in repurchases should always consider the impact of insider trading and antifraud provisions, including Rule 10b-5.

At a minimum, the company should assume that its officers, directors and controlling shareholders will be deemed to be “insiders;” that the rules as to insiders will apply to purchases as well as sales; that the rules generally require disclosure of material facts concerning the company or affecting the market in securities of the company not generally known to the public; and that the disclosure or use of non-public information may violate a fiduciary duty owed to the company or stockholders to whom it is not disclosed. A few guidelines include:

- A company should generally avoid purchasing stock at any time when any insider is selling equity securities, and insiders should avoid selling the company’s stock, when the company is purchasing its own stock.
- The company should encourage its executive officer, directors and other insiders (and should memorialize this in their plan or program) not to go into the market and purchase or sell, on their own behalf, the company’s common stock during the course of any repurchase program, unless they advise a designated officer and secure confirmation that such action will not violate any applicable securities or other laws or fiduciary obligations to the company or its stockholders. A company can use a Rule 10b5-1 plan for the repurchase of securities, coupled with the

Rule 10b-18 repurchase program, to monitor purchases by executive officers, directors and other insiders.

- The company should avoid purchasing shares from officers, directors or other insiders during the course of a program to avoid any appearance of preference or conflict of interest.

Furthermore, when engaging in repurchases, a company must be rigorous in connection with its disclosure obligations to the public. Once a company implements a stock repurchase program, the company should be extra mindful of making prompt and complete disclosure of all material information to the public that, if known, might reasonably be expected to influence the market price of the company’s stock. If a proposed repurchase happens to coincide with the announcement of news about the company, the purchase should be deferred until after the full dissemination of information. Moreover, if the company is engaged in negotiations or discussions with respect to material corporate events, repurchases should be suspended until there has been public disclosure of the transaction in question. However, where the material corporation event is a merger, acquisition or other similar transaction, other timing factors should be taken into account. See “*What if there is a merger or other acquisition occurring?*”

Does Rule 10b-18 apply to company repurchases made in markets outside the United States?

No. The Rule 10b-18 safe harbor does not apply to repurchases made outside the United States. Additionally, foreign trading volume is not included in a security’s ADTV calculation for purposes of applying the safe harbor.

**Interaction between Rule 10b-18
and Other Federal Securities Laws**

How does Rule 10b-18 relate to other securities laws and regulations?

Rule 10b-18 provides a company a safe harbor from liability for manipulation in connection with stock repurchases in the open market; however, it does not provide protection from other federal securities laws, such as insider trading and antifraud provisions. A company making purchases pursuant to a stock repurchase program must still comply with other regulatory reporting requirements.

Can a company structure its Rule 10b-18 stock repurchase program to comply with the Rule 10b5-1 safe harbor?

Yes, a company can avoid Rule 10b-5 liability by structuring its stock repurchase program to comply with the Rule 10b5-1 safe harbor. Compliance with the safe harbor under Rule 10b5-1 generally requires that the company, before becoming aware of any material non-public information, do one of the following: (i) enter into a binding contract to purchase the securities; (ii) instruct another person to purchase the securities for the company's account; or (iii) adopt a written plan for purchasing or selling the securities and conform its stock repurchases to the requirements of a Rule 10b5-1 plan. For a Rule 10b-18 repurchase program to meet the requirements of the safe harbor under Rule 10b5-1, the program must contain one of the following elements: (i) it must specify the amount, price, and date of the transaction(s); (ii) it must include a written formula, algorithm, or computer program for determining amounts, prices and dates for the

transaction(s); or (iii) it must not permit the company to exercise any subsequent influence over how, when, or whether to make purchases or sales (and any other person exercising such influence under the stock repurchase program must not be aware of material non-public information when doing so). Furthermore, the repurchase program must be entered into in good faith and not as part of a plan or scheme to evade the prohibitions of Rule 10b5-1. The company must implement reasonable policies and procedures to ensure that individuals making investment decisions on its behalf would not violate the laws prohibiting trading on the basis of material non-public information.

How does Regulation M affect stock repurchases?

Under Rule 102 of Regulation M, with certain exceptions, the company cannot repurchase its common stock during certain restricted periods if at the same time the company or an affiliate is engaged in a "distribution" of the same class of equity securities or securities convertible into the same class of equity securities. Regulation M requires that repurchase activity be discontinued one business day prior to the determination of the offering price for the securities in distribution until the company's completion of its participation in distribution. The term "distribution" in this context covers more than conventional public offerings and includes any offering which is distinguished from any ordinary trading transaction by the magnitude of the offering and the presence of special selling efforts and methods. This definition may include certain offerings in connection with acquisitions or exchange offers. Such a distribution might also take place if a major stockholder of the company were engaged in significant sales of the company's stock.

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